

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

AMPCO SYSTEM PARKING, A  
SUBSIDIARY OF ABM INDUSTRIES, INC.<sup>1</sup>

Employer

and

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC

Petitioner

Case 18-RC-17377

**DECISION AND DIRECTION OF ELECTION**

As amended at the hearing, Petitioner seeks an election in a unit of all full-time and regular part-time employees classified by the Employer as “supervisors” and control room assistants; excluding statutory supervisors within the meaning of Section 2(11) of the Act, managers, professional employees, confidential employees and guards. On the other hand, the Employer contends that the 14 individuals it classifies as supervisors and being sought by Petitioner for inclusion in the unit, are statutory supervisors who should therefore, be excluded from the unit.<sup>2</sup>

After reviewing the record, I conclude that the 14 individuals the Employer classifies as supervisors (herein “supervisors”) are not statutory supervisors within the meaning of the Act.

---

<sup>1</sup> The Employer’s name appears as amended at the hearing.

<sup>2</sup> The Employer and Petitioner agree that the following employees whose job title is “supervisor” are being sought by Petitioner and are appropriately in the unit, unless, as the Employer contends, they are statutory supervisors: Jim Amacher; Steve Bean; Norvin Burrus; LeRoy Clewette; Lori Green; Michael Jendro; Rob Jungeis; Ronald Kvamme; Mark Marquis; Joseph Menke; Carmella Richardson; David Sadowski; Kerry Seebach; and Roger Wardell.

Therefore, I will order an election in the unit sought by Petitioner.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Based upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In this decision, I will first summarize the Employer's operation, including its supervisory/managerial hierarchy. Second, I will give an overview of the job duties of the "supervisors" sought by Petitioner. Then I will summarize their roles in issuing attendance notices, coaching employees, correcting time cards/authorizing overtime, managing cash, and in nonstandard transactions/damaged vehicle claims. Finally, I will explain my conclusion that the "supervisors" sought by Petitioner do not have any of the indicia of supervisory status specified in Section 2(11) of the Act.

---

<sup>3</sup> The Employer, Ampco System Parking, a subsidiary of ABM Industries, Inc., is a California corporation with an office and place of business in St. Paul, Minnesota, where it is engaged in the operation of a parking facility. During the calendar year 2004, a representative period, the Employer purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Minnesota. *Airline Parking, Inc.*, 196 NLRB 1018 (1972).

## **THE EMPLOYER'S OPERATION**

The Employer contracts with the Metropolitan Airports Commission to operate all parking facilities at the Minneapolis-St. Paul (Minnesota) International Airport. These parking facilities are located at the Lindbergh Terminal, including the valet garage under this terminal, and the Humphrey Terminal. The Employer's operation is 24 hours/day and 7 days/week. The Employer assumed the contract to operate the parking facilities in about August, 2004.

The Employer's General Manager is Matthew J. Bauer. Reporting directly to Bauer are Office Assistant Shari Haggenmiller, HR Manager Heather Noyes, Assistant General Manager Riad Hmami, and Revenue Manager Chrity Thaelke. Reporting to Revenue Manager Chrity Thaelke are four employees on the Employer's audit staff. No party contends that these four employees are in the Unit sought by Petitioner. Reporting to HR Manager Heather Noyes are four control room assistants. Both parties agree that the four control room assistants are appropriately in the Unit. There is very little record testimony regarding the functions or working conditions of the control room assistants. Reporting to Assistant General Manager Himami are five operations managers (although at this time the Employer has filled only three of the positions). Neither the Employer nor Petitioner contends that they are in the Unit sought by Petitioner. Reporting to the five operations managers are the "supervisors" sought by Petitioner. Finally, according to the Employer's organizational chart, reporting to the "supervisors" sought by Petitioner are cashiers and carrunners (also known as valets).

The cashiers and carrunners are in a unit represented by Teamsters Local 120. There are 55 full and part-time employees in the Local 120 bargaining unit. While the Employer and Teamsters Local 120 are still finalizing the collective-bargaining agreement for the cashiers and carrunners unit, the Employer has largely implemented the terms of the contract.

## **Overview of the Job Duties of the “Supervisors” Sought By Petitioner**

There is no evidence that the “supervisors” sought by Petitioner fire employees or recommend the termination of employees. There is also no evidence that they hire employees or recommend the hire of employees. In addition, there is no evidence that the employees sought by Petitioner lay off, recall, transfer, promote or reward employees, or effectively recommend any of these actions; and they do not evaluate employees or adjust employee grievances. Finally, it does not appear that the Employer contends that the “supervisors” sought by Petitioner assign work to employees or direct employees’ work using independent judgment. Rather, the Employer contends that the “supervisors” sought by Petitioner discipline employees and have a role in authorizing overtime.

The “supervisors” sought by Petitioner are paid between \$15.21 and \$19.40 per hour. This compares to a wage rate of \$14.10-\$14.24 per hour for cashiers and carrunners. The “supervisors” punch a time clock, as do the cashiers and carrunners. Benefits for cashiers and carrunners are contractually mandated, while all non-union personnel (including the control room assistants) have different benefits. However, all employees, whether in the Teamster Local 120 unit or not, have the same health and dental insurance plans, but the non-union employees contribute more toward the premium costs.

The Employer contends that the “supervisors” sought by Petitioner attend monthly meetings with managers, where safety and general operational issues are discussed, as well as reviewing the Employer’s contract with the Metropolitan Airport Commission. However, this general assertion (as no specific meetings were described by the Employer’s witness) is contradicted by the testimony of one of the “supervisors” sought by Petitioner. He stated that

while there were meetings shortly after the Employer assumed operation of the parking facilities in August 2004, there have not been monthly meetings since then.

The Employer also presented inconsistent evidence regarding hours that operating managers work. However, it appears that except for the time period from about 11:00 p.m. to about 6:00 a.m. each day, an operations manager is present and working at the Employer's facility. Thus, according to the Employer, the "supervisors" sought by Petitioner are the persons of highest authority during the hours no operations manager is present. However, there is an operations manager who is on call when none is at the Employer's facility. In any event, there is no record evidence suggesting that the "supervisors" sought by Petitioner have any more authority from 11:00 p.m. to 6:00 a.m. than at any other time.

The "supervisors" do not schedule the work hours of any employees. Rather cashiers and carrunners select their shifts by bidding the times when and locations where they would like to work. There is no evidence that the "supervisors" direct the work of cashiers and carrunners (except in the contexts of coaching employees or discussing discipline issues, which are described below). In addition, the "supervisors" do not consistently work with the same group or team of employees. Finally, while the Employer contends that there are 14 "supervisors" and 55 unit employees that they supervise, in fact "supervisors" generally work with teams of 1-4 employees at a time.

### **Role of "Supervisors" in Issuing Attendance Notices**

Attendance notices are issued to employees who have been absent a certain number of times, warranting discipline action. A clerical person tracks attendance, prepares the attendance notice and checks the box regarding the level of discipline that is appropriate. A manager reviews the attendance notice to make sure it is justified. Then one of the "supervisors" sought

by Petitioner hands the attendance notice to the employee. The Employer contends that “hopefully” the “supervisor” works with the employee to correct the attendance problem. The “supervisor” also signs the attendance notice. However, there is no evidence rebutting the testimony of one of the “supervisors” in the unit sought by Petitioner that he signs the notice after the employee does, to verify that the employee has signed it. There is also no evidence rebutting this same “supervisor’s” testimony that he has no access to attendance records of employees.

### **Role of “Supervisors” in Coaching Employees**

In the record are a number of coaching reports involving “supervisors” in the unit sought by Petitioner. However, the Employer was clear that these coaching sessions are not viewed as discipline. Moreover, at least with regard to this record, it appears that most coaching is generated not by the “supervisors,” but by someone else. For example, when cashiers either are short or over the money they should have, the audit staff generates paperwork for verbal coaching. The “supervisor” is supposed to sign the paperwork and coach the employee to do better. This may include making sure the cashier has appropriately organized money in the drawers. With regard to overages and shortages, the cashiers work under a point system that determines the level of discipline (if any).

There is no clear record evidence of even a single example of discipline issued by a “supervisor” in the unit sought by Petitioner. In fact, there is no evidence that these “supervisors” even coach employees unless as a result of something generated by the audit staff or clerical employee, as described above.

The Employer contends these “supervisors” can recommend discipline, but there is no evidence that they have done so. In fact, even the Employer’s evidence is that in the event a

“supervisor” made such a recommendation, the recommendation would be reviewed by the HR Manager and another manager to determine the appropriate course of action.

### **Role of “Supervisors” in Correction of Time Cards/Authorization of Overtime**

If a cashier or carrunner clocks in or out erroneously, or works hours not on the schedule, the “supervisors” sought by Petitioner correct the timecard and initial the correction. The purpose of this action is so that payroll knows that the deviation is acceptable.

The Employer also contends that “supervisors” can authorize overtime. However, the Employer presented no specific examples, and one of the “supervisors” who testified maintained that because overtime is discouraged by the Employer, overtime is rare. In any event, it appears that overtime would be limited to those circumstances where an employee calls in absent or leaves early and additional help is needed. Then, the “supervisor” first looks for a replacement where no overtime is necessary, following procedures set out in the contract between Teamsters Local 120 and the Employer. I also note that one of the “supervisors” who testified stated that if someone calls in sick, he calls an operations manager and asks if the employee should be replaced, and that his understanding is that he is required to make this call to the operations manager.

### **Role of “Supervisors” in Managing Cash**

There are manager’s safes at the Humphrey and Lindberg terminals, and at the valet garage. It is the “supervisors” responsibility to make change for cashiers and to maintain an appropriate amount of cash in the safe (\$1,500-\$4,500). “Supervisors” collect money from the cashiers booths, verify the amounts, and place the money in the safes. When a member of the

audit staff (accompanied by a guard) picks up money, which occurs daily, the “supervisor” verifies the amount being taken by the audit employee.

### **Role of “Supervisors” in Nonstandard Transactions/Damaged Vehicle Claims**

Nonstandard transactions include customers who have lost parking tickets, customers where the parking ticket does not match the license plate, or when customers do not have sufficient money to pay the parking cost. The “supervisors” job is to make sure the nonstandard transaction is handled in accordance with Employer policies. For example, if a customer lacks sufficient funds, the “supervisor” can decide to require the customer to get the funds from another source or by wire, or if under \$30, can decide to ask the customer to sign a promissory note (anything over \$30 in a promissory note requires approval of an unidentified person above the “supervisors”).

With regard to damaged vehicle claims, “supervisors” fill out incident reports. If the damage occurred while the car was in the Employer’s custody (valet parking), the incident report goes to the Employer for review and action. If the damage occurred while in the parking ramps, the incident report goes to the Metropolitan Airports Commission.

### **Conclusion**

The burden of proof is on the party claiming supervisory status. *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003). In this case, therefore, the Employer has the burden of proof. I conclude that the Employer has not met its burden of proof.

First, there is absolutely no evidence that “supervisors” discipline employees, even assuming all of the Employer evidence is accurate. By the Employer’s own admission, “coaching” is not considered discipline. Equally important, all attendance warnings and incident



reports/discipline related to shortages/overages of money are generated by individuals other than the “supervisors.” The role of “supervisors” is limited to handing disciplines to the employees, signing the disciplines to verify the relevant employees signed them, and “hopefully” (to use the Employer’s word) to encourage the employee to do better. I know of no Board cases finding such limited authority to constitute discipline within the meaning of Section 2(11) of the Act. On the contrary, the Board has consistently held that in order to establish supervisory status, an employer must demonstrate that an individual’s participation in the disciplinary process lead to a personnel action without an independent review or investigation by others. *Williamette Industries*, 336 NLRB 743, 744 (2001).

Second, while the Employer provided general testimony that “supervisors” authorize overtime, no specific examples were cited. More importantly, the evidence is clear that the Employer’s stated policy is to significantly limit overtime, and overtime that is offered must comply with the Teamsters Local 120 contract. Finally, a “supervisor” testified it is his understanding that he cannot replace any absent employee (whether overtime is involved or not) without authorization from an operations manager. Thus, I conclude that the evidence is insufficient to establish that “supervisors” authorize overtime. *Crittenton Hospital*, 328 NLRB 879 (1999).

Third, with regard to initialing time cards, the Board is clear that without more, that action is a clerical function. *Quadrex Environmental Co.*, 308 NLRB 101,102 (1992).

Finally, while the Employer alludes to the “supervisors” roles in handling nonstandard transactions and cash and in writing up damaged vehicle claims as evidence of managerial functions, there is no record evidence that these duties require any discretion or independent judgment. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974) (managerial employees

formulate and effectuate management policies by expressing and making operative the decisions of the employer). On the contrary, the “supervisors” are involved in these matters to make sure established procedures are followed.

The fact that an employer holds out an individual as a supervisor is not sufficient to find 2(11) status. *Polynesian Hospitality Tours*, 297 NLRB 228 (1989). Thus, I conclude that the Employer has failed to establish the 2(11) status of the “supervisors” sought by Petitioner.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees classified by the Employer as “supervisors” and control room assistants; excluding managers, professional employees, confidential employees, guards and statutory supervisors as defined in Section 2(11) of the Act.

#### **DIRECTION OF ELECTION<sup>4</sup>**

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees

---

<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 30, 2005**.

engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>5</sup>

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Steelworkers of America, AFL-CIO, CLC**.

Signed at Minneapolis, Minnesota, this 16th day of June 2005.

/s/ Robert W. Chester

---

Robert W. Chester, Acting Regional Director  
Eighteenth Region  
National Labor Relations Board  
Suite 790  
330 South Second Avenue  
Minneapolis, MN 55401

<sup>5</sup>

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Acting Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Acting Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 South Second Avenue, Minneapolis, MN 55401-2221, on or before close of business **June 23, 2005**. No extension of time to file this list may be granted by the Acting Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.